

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

KHRISBELL QUEZADA,

Plaintiff,

v.

CASSENS TRANSPORT COMPANY and
HERNAN VALDIVIA

Defendants.

Case No.:

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, and 1441(a), Defendants, CASSENS TRANSPORT COMPANY and HERNAN VALDIVIA (“Defendants”) by and through their attorneys, Tompkins, McGuire, Wachenfeld & Barry, LLP, file this Notice of Removal of this case from the state court in and for the State of New York, County of Queens to the United States District Court for the Eastern District of New York. In support of this Notice, the Defendants state as follows:

BACKGROUND

1. On or about January 12, 2022, Plaintiff, Krishbell Quezada (“Plaintiff”) commenced an action against the Defendants in the Supreme Court of the State of New York, County of Queens (“the Supreme Court”), bearing Index No. 700783/2022, captioned “KRISHBELL QUEZADA v. CASSENS TRANSPORT COMPANY and HERNAN VALDIVIA” (“the Complaint”). See Complaint (attached as **Exhibit A**).

2. Plaintiff’s Complaint seeks judgment against Defendants for injuries that the Plaintiff allegedly suffered as a result of a motor vehicle accident that occurred on May 20, 2021 on Jamaica Avenue at or near Springfield Boulevard in Queens, New York.

3. The Complaint did not allege an amount in controversy in excess of \$75,000. See Exhibit A.

4. The Defendants filed an Answer on March 23, 2022. A true and exact copy of the electronically filed and Verified Answer is attached to the Index as **Exhibit B.**

5. On March 23, 2022, Defendants served Combined Discovery Demands on Plaintiff, including a demand for a statement of total damages pursuant to CPLR§ 3017(c). A true and exact CPLR § 3017(c) request is attached to the Index as **Exhibit C.**

6. On April 13, 2022, Plaintiff responded to Defendants' CPLR § 3017(c) request, demanding judgment against the Defendants "in the sum of TWENTY-FIVE MILLION (\$25,000,000.00) DOLLARS all together with the costs and disbursements of this action." A true and exact copy of Plaintiff's Response to Defendants' CPLR § 3017(c) Request is attached to the Index as **Exhibit D.**

7. Pursuant to 28 U.S.C. § 1441(a), "[e]xcept as otherwise expressly provided by Act of Congress, in any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

8. As set forth below, this Court has original jurisdiction over this action based on diversity of citizenship.

9. This Court has original jurisdiction over the civil action under 28 U.S.C. 1332(a) because the amount in controversy exceeds the sum of \$75,000 and the matter is between citizens of different states.

10. On April 13, 2022, the Plaintiff made a demand for an amount in excess of \$75,000. See Exhibit D. As a result, the amount in controversy for purposes of removal based on diversity of citizenship exceeds \$75,000. See 28 U.S.C. § 1446(c)(2).

11. As stated in the Complaint, Plaintiff is a citizen of the State of New York. See Exhibit A. Defendant, Cassens Transport Company, is a citizen of the States of Illinois. Its principal place of business is located in Edwardsville, Illinois, and it is incorporated in the State of Illinois. See 28 U.S.C. 1332(c)(1). See Corporation File Detail Report from the State of Illinois website attached to the Index as **Exhibit E**.

12. Defendant, Hernan Valdivia, is a citizen of the State of New Jersey, residing at 587 Meadow St., Elizabeth, New Jersey 07201.

13. As the Plaintiff and Defendants are citizens of different states, complete diversity exists under 28 U.S.C. § 1332(a).

VENUE AND PROCEDURAL REQUIREMENTS

14. The Supreme Court of the County of Queens where the action was commenced and is presently pending is located within the Eastern District of New York. Accordingly, this Notice of Removal is properly filed in this Court under 28 U.S.C. § 1441(a).

15. Upon receiving the file-marked copy of this Notice of Removal, we will serve it upon Plaintiff's counsel and file it with the Clerk of the Supreme Court of New York, County of Queens County, as required by 28 U.S.C. § 1446(d).

16. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b)(3) because Defendants could not ascertain removability until Plaintiff responded to Defendants' CPLR § 3017(c) Request on or about April 13, 2022. Defendants are filing this Notice of Removal within 30 days of receipt of that document. See e.g., Feder v. Costco Wholesale Corp., No. 17-CV-3708

(NGG) (RLM), 2017 U.S. Dist. LEXIS 109650, at *2 (E.D.N.Y. July 13, 2017) (“The 30 day removal clock ‘does not start to run until the plaintiff serves the defendant with a paper that explicitly specifies the amount of monetary damages sought.’” (quoting Moltner v. Starbucks Coffee Co., 624 F.3d 34, 38 (2d Cir. 2010))).

17. This removal is being filed within one (1) year of the commencement of the action in the Supreme Court of the State of New York in the County of Queens.

CONCLUSION

18. Since Plaintiff and Defendants are citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of all interest and costs, this Court has jurisdiction over the Plaintiff’s claims pursuant to 28 U.S.C. § 1332. Defendants are therefore entitled to remove this case to this Court pursuant to 28 U.S.C. § 1441.

WHEREFORE, Defendants, CASSENS TRANSPORT COMPANY and HERNAN VALDIVIA respectfully request that the action bearing Index No. 700783/2022, captioned “KRISHBELL QUEZADA v. CASSENS TRANSPORT COMPANY and HERNAN VALDIVIA,” pending in the Supreme Court of the State of New York, County of Queens, be removed to this Court, and that this Court exercise its subject-matter jurisdiction over this action, and for such other relief as this Court may deem just and proper.

Respectfully submitted,

/s/ *Michael S. Miller*

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on April 26, 2022, the foregoing was filed electronically with the United States District Court for the Eastern District of New York and served by mail upon the following:

To: John C. Merlino, Esq.
William Schwitzer & Associates
820 Second Avenue, 10th Floor
New York, New York 10017

/s/ *Michael S. Miller*
Michael S. Miller, Esq.

DATED: April 26, 2022